

PHILIP MORRIS

E.E.M.A.

CASE POSTALE - 1000 LAUSANNE 9

INTER-OFFICE CORRESPONDENCE

pec
AGI
16 NOV. 1984

To: Walter Thoma
From: Frederick Dulles
Subject: Barclay - Switzerland

Date: 15 November 1984
C.C.: AGI.

The following is a short status report.

1. I passed your messages of Wednesday to Armand Gillon and Raymond Pantet.
2. A letter is being sent this evening (Thursday) by post recommandée to the Office Fédéral de la Santé Public, to the attention of Dr. Y. Siegwart, by Maître C.A. Junod on behalf of his clients. This letter has gone through two drafts and has been the subject of numerous telephone conversations among Messrs. Gillon, Pantet, Burrus, Schueler, Fritsch, Zurn, Maître Champoud and me. The letter does the following:
 - Junod refers to his telephone conversation of 12 November 1984 with Siegwart in which Siegwart confirmed that the OFSP had permitted BAT, temporarily, to sell Barclay without tar and nicotine numbers in spite of Article 420(c) of the ODA.
 - Junod states that this failure to apply Article 420(c) of the ODA to the Barclay cigarette is legally unsupportable.
 - Junod notes that, while the OFSP may not want to influence the work of the expert commission, the derogation from Article 420(c) ODA could only be tolerable for a very short period and should in no case extend beyond 15 December 1984.
 - He notes that the OFSP has been aware of this problem for two years.
 - He formally requests a copy of Siegwart's decision to permit BAT to sell Barclay without numbers.

You will note that this letter does not in any way "accept" Siegwart's decision to allow BAT to sell Barclay without tar and nicotine numbers. On the contrary.

3. The four manufacturers put paid advertisements in the Blick (which had not reported the TF decision at all) today and in three other newspapers tomorrow (Friday) setting forth the fact that the Federal Court had rejected BAT's appeal, noting that the June Geneva Order was in effect and specifying that Barclay product with "1 mg ..." has been seized and that Barclay cannot be sold or advertised with the 1 mg. indication. The advertisements also note that while Barclay may appear without any numbers, very soon it will have numbers corresponding more closely to reality.

2025443206

By the time I reached AGI and RAP mid-day Wednesday it was too late to stop this action. Unless you adhere unswervingly to the philosophy that any publicity, good or bad, is helpful to the product, I think these advertisements were positive.

4. We have learned that BAT is including a small insert in each Barclay pack stating that there are no numbers because of the competitors' attacks on Barclay and that this action has been taken in agreement with the Office Fédéral de la Santé Public.



Frederick Dulles

2025443207